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C O N F I D E N T I A L SECTION 01 OF 04 KATHMANDU 000087

SIPDIS

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TAGS: PHUM PREL MCAP MOPS NP

SUBJECT: NEPAL: ARMY FACES CRITICISM FOR HUMAN RIGHTS
VIOLATIONS

REF: A. (A) 02 KATHMANDU 0634

B. (B) 02 KATHMANDU 1191

C. (C) 02 KATHMANDU 1372

D. (D) 02 KATHMANDU 1890

Classified By: AMB. MICHAEL E. MALINOWSKI. REASON: 1.5 (B,D).

SUMMARY

1. (SBU) The Royal Nepal Army (RNA) has come under fire recently from a variety of sources, both local and international, for human rights abuses committed while fighting Nepal's bloody six-year-old Maoist insurgency. Most disturbing, according to some sources, is the pattern of apparent impunity that has so far insulated rank-and-file soldiers as well as officers from prosecution. The human rights cell set up by the Army in July has so far not demonstrated an ability or a will to investigate cases thoroughly. The RNA's recent mishandling of rape allegations against two officers offers a sobering case in point, suggesting some in the Army may be willing to go to considerable lengths to protect and exonerate their own, even in the face of significant evidence of guilt. The Maoists' abysmal human rights record notwithstanding, widespread and persistent human rights abuses pose a continuing obstacle to the RNA's efforts to contain the insurgency. The Embassy will step up its ongoing dialogue with the RNA about human rights and hopes to offer increased support for human rights training and capacity-building in the investigative cell.
End summary.

RECENT REPORTS SCORE RNA RIGHTS RECORD

2. (SBU) A number of end-of-year reports by international and local human rights organizations have criticized the Royal Nepal Army (RNA) and police, as well as the Maoists, for a variety of abuses. Amnesty International, Human Rights Watch, Nepal's National Human Rights Commission, and a local NGO called the Informal Sector Service Center (INSEC) have all described a situation in which Nepalis are suffering from escalating violations committed by both the Maoists and the security forces. Despite the difficulty of obtaining and verifying information in areas hit hardest by the insurgency, local journalists are devoting greater effort to recounting and documenting stories of abuses on both sides. Unrelenting press coverage of one incident, in which five boys and young men returning from late-night festivities on November 27 were mistakenly shot and killed by RNA soldiers in Nuwakot District, succeeded in eliciting from the RNA an admission of the innocence of the five--whom Defense Ministry press releases had previously described as "terrorists"--and a recommendation of compensation for their families.

HUMAN RIGHTS CELL

3. (C) In July the RNA established a human rights cell to review complaints of violations (Ref C). (Note: The Home Ministry announced the establishment of its own human rights unit on January 14, 2003. End note.) In 2002 the cell accepted more than 1,200 inquiries from the general public, organizations, and NGOs, the bulk of which relate to missing persons, according to Major Pankaj Karki. According to Karki, a number of these complaints date from before late 2001, when the RNA was first mobilized against the insurgents. None of these complaints appears to allege extra-judicial killings. The RNA has responded to about 50 of these complaints so far. The head of the National Human Rights Commission complained to us in December that his organization has so far had no success in securing action from the RNA on any of the cases it has brought before the Government of Nepal (GON). The cell has investigated eight allegations of human rights abuses by the RNA, six of which were brought to its notice by the U.S. Embassy and two by the German Embassy. (Other high-profile allegations were not investigated, apparently, because no one brought a complaint.)

14. (C) Although the Embassy has seen no copies of reports of investigations conducted by the cell, discussions with cell members suggest a general lack of thoroughgoing, impartial inquiry. The examiners, for the most part, seem to have limited their questioning to alleged perpetrators and their superiors, as well as the Chief District Officer and local police authorities, although in a few cases surviving victims themselves were contacted. Medical personnel; neighbors; potential eyewitnesses; and local political, community, religious, or business leaders do not appear to have been interviewed. Of the six cases raised before the human rights cell by our Embassy, in only one--the apparent extra-judicial killing of Kancha Dongol in Kathmandu on March 15, 2002 (Refs A and D)--has any punishment been meted out. (Note: The concerned battalion also has been excluded from US-funded military training because of evidence of gross human rights violations. End note.) On January 13, 2003, the human rights cell reported its findings to the Embassy: that Dongol was shot while trying to escape. Two sergeants remain in RNA custody for dereliction of duty in permitting the attempted escape. Poloff reiterated past statements to the cell that a photograph of Dongol's corpse reveals a wound in the temple from a bullet apparently fired from close range, as well as indications of torture (Ref D). She also asked if any of the five other men arrested with Dongol (one of whom claimed to have been a witness to his killing) had been questioned; the cell had not contacted them. On January 15 a member of the cell told poloff the JAG was not satisfied with the previous investigation and was reviewing the possibility of reopening the case.

15. (C) In two of the other cases raised by the Embassy, the RNA had admitted mistakenly killing innocent civilians (including two adolescents) and has recommended to the civilian government that the families be paid compensation. (Note: Purported eyewitnesses to one of these killings--that of a 12-year-old girl--have told human rights groups and the local press that the security forces took the child from her home to a field and shot her. The RNA contends the girl failed to heed an order to stop during a cordon-and-search operation in her village. End note.) In the remaining three cases raised by the Embassy, the soldiers involved were exonerated. (Note: Two other cases raised by the Embassy have apparently not yet been investigated. End note.) Of the two cases raised by the Germans, one officer was disciplined by being denied admission to staff college for a year; in the other, all involved were exonerated.

RAPE ALLEGATIONS DRAW ATTENTION;
INDICATIONS OF COVER-UP

16. (SBU) One of the cases raised by the Embassy was the alleged custodial rape committed against two teenaged female cousins by two officers at Chisapani Barracks in Nepalgunj, Banke District in April, which was published in Amnesty International's December 19 report on Nepal. Amnesty's account of the incident, which contained the names of both victims and one of the alleged perpetrators, was picked up and broadcast widely by the local media. (Note: Amnesty has since been criticized by a number of local NGOs and others for printing the girls' names. End note.) The local BBC correspondent's interview with one of the girls was also aired December 19. In the days following publication of the report, Amnesty International and a local human rights group charged that Captain Ramesh Swar, one of the alleged perpetrators, and Major Ajit Thapa, his immediate superior, had threatened and intimidated the girls and their families into publicly recanting their statements. Military guards were posted at the girls' home, and the girls were prevented from communicating with human rights workers, several sources said. The state-owned media subsequently broadcast a statement by one of the girls, in which she declared nothing had happened to her during her detention at the barracks. On December 31 the Chief District Officer in Banke District (the highest-ranking civil servant in the district, the CDO is an employee of the Home Ministry) held a public meeting in which one of the girls and members of her family recanted the previous allegations of rape.

17. (C) According to Mandira Sharma of the human rights NGO The Advocacy Forum (protect), Captain Swar, Major Thapa, and others in the RNA had threatened the girls and their family members with harm unless they took back their statements. Sharma's organization had first documented the case in April, and helped obtain psychological counseling for both girls and medication for one who was experiencing excessive bleeding. According to what the girls told Sharma (and, subsequently, the BBC correspondent), they were detained by the Captain in an effort to extort money from an uncle, who is apparently a local smuggler. After the rapes, the Captain reportedly continued to harass the girls and their families for money. Sharma said she suggested the girls speak with Amnesty International investigators during their field investigation in September, which they agreed to do. After the report was

published, however, the threats against the girls and other family members escalated, according to Sharma. The Advocacy Forum lawyer who initially took the girls' statements reported being threatened as well; the NGO has since moved him to Kathmandu for his own protection. With RNA guards posted outside their houses, the families of the girls apparently felt they had no option but to recant their statements, Sharma said.

18. (C) Members of the RNA human rights cell have already completed an initial investigation into the incident, recommended no cause for action since the girls have retracted their statements, and have forwarded their report to the Chief of Army Staff for approval. (Note: Both Captain Swar and Major Thapa remained in their posts at Chisapani Barracks after the story first broke and throughout the course of the investigation. End note.) RNA investigators apparently did not question anyone other than the girls, some family members, and RNA soldiers as part of their inquiry. Local religious leaders who knew of the incident, the owner of a local pharmacy where one of the girls sought medical treatment, the human rights organization that brought the allegations, and the BBC correspondent who interviewed one of the girls were not contacted. JAG Brigadier General B A Sharma, who heads the human rights cell, asserted that the RNA had to post guards at the house for the girls' own protection. Sharma acknowledged in retrospect that the RNA should not have allowed the accused to remain in a position of authority in the area after allegations were made and the investigation was ongoing, and also tacitly admitted the potential for intimidation under such circumstances. That said, he concluded, "what to do?" if the girls have already dropped charges. Nor did members of the cell appear puzzled that unmarried girls in a conservative society should fabricate allegations of rape. One investigator, brushing aside evidence that the girls had recounted their stories independently to the human rights organization months before and to the media, speculated that enemies of the family had manufactured the story to defame the girls and/or "communalists" (the girls are Muslim) had spread it to create ill will between the RNA and the local population.

WHAT TO DO?

19. (C) Comment: Domestic insurgencies tend to be nasty, bloody and vicious. The Maoists have amply demonstrated on countless occasions their own willingness to inflict savage abuses on the beleaguered civilian population. We are prepared to believe that most of the human rights abuses ascribed to the RNA can be attributed to lack of training and discipline, poor intelligence, and fear instilled in soldiers by chronic Maoist brutality. We believe that our ongoing training is ameliorating some of this incompetence. The Banke rape case, however, appears to be a particularly egregious example of a criminal assault for criminal purposes not even nominally related to the insurgency. We have impressed on the RNA and on others in the GON the need to demonstrate accountability, and our ongoing dialogue with high-ranking officers appears to resonate, at least on a rhetorical plane. Unfortunately, however, the RNA's ham-fisted handling of this case raises serious doubts about the integrity of its investigative processes. The Embassy plans to raise this concern with senior military leaders, emphasizing that continued USG military assistance is closely linked to evidence of greater accountability. At the same time, with our British colleagues, we plan to engage with the human rights cell on a more sustained basis, demanding more thorough and more impartial investigations, encouraging more appropriate penalties, and sharing best practices. In this context, we plan to include in this year's MPP requests for additional resources to support further human rights training for the RNA, civilian police and Armed Police Force, as well as assistance to the RNA to upgrade investigation techniques and capabilities for its human rights cell.

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